

**Letter of Findings: 65-20200209
Oversize/Overweight Penalty
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier erroneously believed it was exempt from the Department's oversize/overweight civil penalty because it was hauling a tank to and from a farm.

ISSUE

I. Oversize/Overweight Penalty - Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-13-2-58; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-2-2; IC § 9-20-2-1; IC § 9-20-3-2; IC § 9-20-3-5; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 289 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that it is entitled to an abatement of the Department's assessment of the Department's "oversize/overweight" civil penalty on the ground that it was hauling a water storage tank to and from a farm.

STATEMENT OF FACTS

Taxpayer is an Indiana farming company. In February of 2019, one of Taxpayer's employees was stopped by the Indiana State Police ("ISP") on US Highway 41 and State Road 63 in Warren County. The ISP found that Taxpayer was hauling a ten foot, one-inch-wide water storage tank, which exceeds the statutory width limitations, without a proper permit. Based on a report provided by the ISP, the Indiana Department of Revenue ("Department") issued a \$5,000 civil penalty. Taxpayer disagreed with the penalty and submitted a protest to that effect. An administrative hearing was held and this Letter of Findings Results. Additional facts will be provided as necessary.

I. Oversize/Overweight Penalty - Assessment.

DISCUSSION

Taxpayer protests the imposition of the \$5,000 penalty on the ground that the "truck and trailer used for the transportation of farm machinery to and from a farm. As such [Taxpayer] was not limited in width . . ." In other words, "[Taxpayer] fell under the farm exemption to general width and height limitations [and] was not required to obtain an oversize permit for the transport as it occurred."

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required but fail to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a Motor Carrier "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty

if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 characterizes both fees and penalties stemming from IC Art. 9-20 violations as a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In regard to width limitations, IC § 9-20-3-2 states:

- (a) The maximum width limitation, except width exclusive devices in accordance with 23 CFR 658.15 or United States Public Law 98-17, is eight (8) feet, six (6) inches.
- (b) The width limits in subsection (a) do not apply to the following:
 - (1) Machinery or equipment used in utility construction or maintenance if the violation is the result of oversize tires.
 - (2) A recreational vehicle with appurtenances that make the vehicle wider than the maximum width limitation described in subsection (a), if:
 - (A) the appurtenances do not extend beyond the width of the manufacturer installed exterior rear view mirrors of the recreational vehicle or the motor vehicle providing motive power; and
 - (B) the manufacturer installed exterior rear view mirrors extend to only the distance necessary to afford the required field of view for the vehicle.

Further, "A vehicle may not carry a load extending beyond the line of fenders on the left side of the vehicle or extending more than six (6) inches beyond the line of the fenders on the right side of the vehicle." IC § 9-20-3-5.

According to IC § 9-20-1-1, "Except as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]." Further, under IC § 9-20-1-2, "[A]n owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

These restrictions do not apply to vehicles "engaged in the construction of highways; and when the movement of the vehicle is confined wholly to highways or roads or sections of highways or roads that are under construction and not yet open to unlimited public use." IC § 9-20-2-1. Additionally, with the exception of interstate highway travel, these restrictions do not apply to:

- (1) Machinery or equipment used in highway construction or maintenance by the Indiana department of transportation, counties, or municipalities.
- (2) Implements of agriculture **when used during farming operations** or when constructed so that the implements can be moved without material damage to the highways.
- (3) Farm drainage machinery.

IC § 9-20-2-2(b).

Nor do these restrictions apply to the "width or height of a farm vehicle loaded with a farm product." IC § 9-20-2-2(d).

In this case, the Department issued Taxpayer a No Permit Civil Penalty for being oversize as the Department records demonstrate that Taxpayer did not apply for and the Department did not issue an oversize permit to Taxpayer. Taxpayer maintains that it was hauling farm machinery to and from a farm and thus was not required to obtain an oversize permit nor was it subject to the oversize penalty. Taxpayer relies on the exemption under IC § 9-20-2-2(d) for "farm vehicle[s] loaded with a farm product[.]" to support its position. Under IC § 9-13-2-58 a "farm vehicle" includes a "'farm truck', 'farm trailer', or 'farm semitrailer and tractor' means a truck, trailer, or semitrailer and tractor used for the transportation of farm products, livestock, or machinery or supplies to or from a farm or ranch. The term includes a covered farm vehicle (as defined in 49 CFR 390.5). The term does not include an implement of agriculture." Farm product "(1) includes agricultural products; and (2) is used interchangeably with 'farm commodity.'"

When Taxpayer's employee was stopped by the ISP, it was hauling a ten foot, one-inch wide water storage tank to and from a farm. While Taxpayer's trailer may qualify as a "farm vehicle" under IC § 9-13-2-58, the water storage tank is not "farm product." Therefore, Taxpayer is not exempt from the penalty imposed under IC Art. 9-20.

FINDING

Taxpayer's protest is respectfully denied.

August 28, 2020

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